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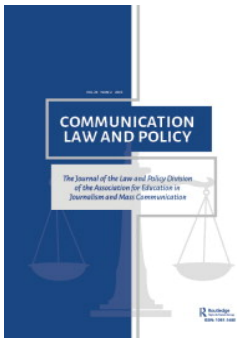
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## Regulatory Annexation: Extending Broadcast Media Regulation to Social Media and Internet Content

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# Regulatory Annexation: Extending Broadcast Media Regulation to Social Media and Internet Content

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## ABSTRACT

This article considers the regulation of social media usage in Nigeria and Africa, drawing from ideas on critical political economy, securitization, and state–citizen distrust. Using a methodology that combines policy analysis, case studies, and qualitative reading of social media texts, it introduces for the first time the concept of regulatory annexation. This is the extension of standards, principles, and sanctions originally meant for one particular frame of reference to another. I establish the concept by drawing from case studies on broadcast media regulation to show that this is being mapped onto the emerging regulation of social media and Internet content in what I describe as the politics of regulation. I argue that regulatory annexation bears significant implications for the control of the entire media architecture and our understanding of new media regulation in the wider sense, both now and in the future.

## KEYWORDS

Broadcasting; Internet; regulation; regulatory annexation; social media

## Introduction

On 8 June 2022, Aminu Mohammed, a 23-year-old student at the Federal University, Dutse, in the northwest of Nigeria, sent out a tweet in Hausa, criticizing Aisha Buhari, wife of the President. Roughly translated, the tweet read “Mama is feeding fat on poor people’s money”<sup>1</sup> and was accompanied by a photograph of the First Lady. The tweet largely went unnoticed until five months later, when on 18 November 2022, Mrs. Buhari, who had no executive portfolio, reportedly instructed the police to arrest Mohammed.<sup>2</sup> The 23-year-old was subsequently charged to court based on Section 391 of Nigeria’s Penal Code for allegedly posting false information capable of affecting Mrs. Buhari’s reputation.<sup>3</sup> The charge relates to offenses bordering on cyberstalking and

<sup>1</sup>*Why Police Dropped Charges Against University Student Accused of Defaming Aisha Buhari—Lawyer*, Premium Times (Dec. 2, 2022), <https://www.premiumtimesng.com/news/headlines/568692-why-police-dropped-charges-against-university-student-accused-of-defaming-aisha-buhari-lawyer.html>.

<sup>2</sup>*Nigeria: ‘Bogus Charges’ Against Student who Tweeted about President’s Wife Must be Dropped*, Amnesty International (Dec. 1, 2022), <https://www.amnesty.org.uk/press-releases/nigeria-bogus-charges-against-student-who-tweeted-about-presidents-wife-must-be>.

<sup>3</sup>*See the Criminal Charge Sheet Against Aisha Buhari’s Critic, Aminu Adamu*, Barrister NG (Dec. 2, 2022), <https://barristerng.com/document-see-the-criminal-charge-sheet-against-aisha-buharis-critic-aminu-adamu>.

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defamation<sup>4</sup> and is nearly identical to the cyberstalking prohibitions in the Cybercrimes Act of 2015.<sup>5</sup> Facing public pressure, Mrs. Buhari withdrew the case on 2 December 2022, with reports suggesting that she had “forgiven” Mohammed, “due to the intervention of well-meaning Nigerians.”<sup>6</sup> It follows another incident in November 2022, involving two TikTokers, who were sentenced to, among other things, 20 lashes for defaming Abdullahi Ganduje, the governor of Kano State, northwest Nigeria.<sup>7</sup>

I refer to these incidents because they highlight the approach to social media regulation, which is the focus of this article. In particular, they point to the tendency that the authorities in Nigeria have to hold social media users responsible for their online comments, especially for dissenting messages deemed to be offensive. They also underscore the inclination in Nigerian policy circles for exercising control over what is permissible content on social media spaces, the kind of control that regulators currently wield over broadcasting. This is what I consider in this study, which draws from and contributes to political economy research, including academic work by scholars like Hardy,<sup>8</sup> Wasko,<sup>9</sup> and McChesney and Schiller.<sup>10</sup> I also consider research on securitization<sup>11</sup> and media capture in Africa.<sup>12</sup> My approach involves examining existing legislation, proposals, and case studies on the regulation of social media in Nigeria and the wider African continent. It centers on the question: What conceptual tools can we use to describe the approach to regulating social media in countries like Nigeria?

The relevance of this question is tied to the gap that I have identified in the field of social media regulation. For instance, I find that there is a substantial body of knowledge on social media regulation in Western countries in North America and Europe.<sup>13</sup> We also have considerable knowledge about regulation and censorship in Global East countries, particularly China.<sup>14</sup> However, far less is known about regulation in countries like Nigeria. The few studies that have explored regulation in Africa generally tend to focus on Internet and social media bans.<sup>15</sup> While I note that all these are important, I maintain that they do not outline a framework that comprehensively articulates the approach to social media regulation that Nigeria is adopting, the kind of regulation that

<sup>4</sup>Aisha Buhari to Testify Against Student Over ‘Poor People Money’ Tweet, Vanguard (Dec. 1, 2022), <https://www.vanguardngr.com/2022/12/aisha-buhari-to-testify-against-student-over-poor-people-money-tweet>.

<sup>5</sup>Cybercrimes Act, 2015 § 24.

<sup>6</sup>Aisha Buhari Withdraws Case Against Student Critic, Daily Trust (Dec. 2, 2022), <https://dailytrust.com/breaking-aisha-buhari-bows-to-pressure-withdraws-case-against-student-critic>.

<sup>7</sup>TikTokers Caned and Ordered to Wash Toilets as Court Rules They Defamed Nigerian Governor, CNN (Nov. 10, 2022), <https://edition.cnn.com/2022/11/10/africa/tiktokers-flogged-kano-nigeria-intl/index.html>.

<sup>8</sup>JONATHAN HARDY, CRITICAL POLITICAL ECONOMY OF MEDIA: AN INTRODUCTION (2014).

<sup>9</sup>Janet Wasko, *Studying the Political Economy of Media and Information*, 7 COMUNICACÃO E SOCIEDADE (2005).

<sup>10</sup>Robert W. McChesney & Dan Schiller, *The Political Economy of International Communications: Foundations for the Emerging Global Debate About Media Ownership and Regulation*, United Nations Research Institute for Social Development, <https://digitalibrary.un.org/record/508995?ln=en>.

<sup>11</sup>OLE WÆVER, SECURITIZATION AND DESICURITIZATION 46–86 (Ronnie D. Lipschutz ed., 1995).

<sup>12</sup>Hayes M. Mabweazara, Cleophas T. Muneri, & Faith Ndlovu, *News “Media Capture,” Relations of Patronage and Clientelist Practices in Sub-Saharan Africa: An Interpretive Qualitative Analysis*, 21 JOURNALISM STUDIES 2, 2154–2175 (2020).

<sup>13</sup>Jack M. Balkin, *Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation*, 51 UC DAVIS LAW REV. 1149, 1149–1210 (2018). See also Giovanni De Gregorio, *The Rise of Digital Constitutionalism in the European Union*, 19 INT’L JOURNAL OF CONSTITUTIONAL LAW 1, 41–70 (2021).

<sup>14</sup>CHINA’S CONTESTED INTERNET (Guobin Yang ed., 2015). See also JACQUES DELISLE, AVERY GOLDSTEIN, & GUOBIN YANG EDs., THE INTERNET, SOCIAL MEDIA AND A CHANGING CHINA (2016).

<sup>15</sup>Nahed Eltantawy & Julie B. Wiest, *Social Media in the Egyptian Revolution: Reconsidering Resource Mobilization Theory*, 5 INT’L JOURNAL OF COMMUNICATION, 1207–1224 (2011). See also Ben Wagner, *Understanding Internet Shutdowns: A Case Study from Pakistan*, 12 INT’L JOURNAL OF COMMUNICATION, 3917–3938 (2018).

targets users like Mohammed. This is what I consider in this study as I explore emerging forms of government intervention and the balance of power regarding social media regulation in an African context.

By so doing, I introduce for the first time the concept of regulatory annexation. I define regulatory annexation as the extension of standards, principles, and sanctions originally meant for one particular frame of reference to another. To demonstrate this, I compare the existing regulation of traditional media forms such as broadcasting, evident in official reactions to the Occupy Nigeria and #EndSARS protests, with social media policies to show the way in which broadcast media regulation is being projected onto social media usage. I further show that regulatory annexation finds expression in much of Africa and in other settings, contexts, and regions of the globe. Hence, I begin the article by discussing research on social media and broadcast media regulation before touching on critical political economy and social media regulation. Then I outline my methodological approach, after which I present my findings, beginning with the analysis of broadcast media regulation as a backdrop for regulatory annexation. Following this, I establish the regulatory annexation concept in Nigeria before examining regulatory annexation in the wider African context. I conclude the article by pointing to the implications of regulatory annexation, not only for the entire media architecture in Nigeria, but also for other regulatory settings in other regions across the world.

## Social Media Platforms, Broadcast Media Regulation, and Securitization in the Nigerian Context

To define social media platforms, I draw from Poell et al.,<sup>16</sup> who see platforms as data infrastructures that, among other things, facilitate and govern interactions between end users, allowing for many-to-many interactions. It relates to the van Dijck et al. definition of platform as “a programmable digital infrastructure designed to organize interactions between users.”<sup>17</sup> Thus, I operationalize the term “platform” in this study to mean services like Facebook, Twitter, and YouTube that provide the means through which users upload and post content based on set rules of governance. They differ from other digital companies like Netflix and Uber, which do not facilitate the kind of user engagement visible in social media spaces. Gillespie further shows that “platform” can be understood in four ways: architecturally, figuratively, politically, and computationally.<sup>18</sup> This four-way understanding of “platform” makes it possible for social media networks to present themselves as infrastructures that provide “raised level surfaces” for people to use to express themselves and to connect, interact, and sell on a global scale.<sup>19</sup>

It is this understanding that shapes how users in Nigeria view social media and the affordances that it provides them, particularly when it comes to the expression of dissent. For instance, Uwalaka and Watkins conceptualize social media in Nigeria as the fifth estate of the realm,<sup>20</sup> suggesting that social media now facilitate the watchdog

<sup>16</sup>THOMAS POELL, DAVID NEIBORG, & BROOKE E. DUFFY, *PLATFORMS AND CULTURAL PRODUCTION* (2022).

<sup>17</sup>José VAN DIJCK, THOMAS POELL & MARTIJN DE WAAL, *THE PLATFORM SOCIETY: PUBLIC VALUES IN A CONNECTED WORLD* (2018).

<sup>18</sup>Tarleton Gillespie, *The Politics of 'Platforms'*, 12 *NEW MEDIA & SOCIETY* 3, 347–364 (2010).

<sup>19</sup>See Gillespie, *supra* note 18.

<sup>20</sup>Temple Uwalaka & Jerry Watkins, *Social Media as the Fifth Estate in Nigeria: An Analysis of the 2012 Occupy Nigeria Protest*, 39 *AFRICAN JOURNALISM STUDIES* 4, 22–41 (2018).

function originally meant for legacy media. Recognizing this, Oladapo and Ojebuyi observe that the Nigerian government should not be involved in regulating new media technologies.<sup>21</sup> The discussion here subsumes social media within the discourse of rights, presupposing that it has become the de facto tool of civic engagement and communication and that regulating it through formal means will limit people's ability to participate in the public sphere. It underscores the importance that people attach to freedom of expression on social media, freedom that exists without state regulation.

One thing that is crucial to appreciating this importance is knowledge of the sociopolitical context concerning what freedom of expression means in Nigeria and to Nigerians—this is related to the theme of state–citizen distrust, which I touch on throughout the article. An example is the way that the government has regulated traditional media forms using censorship and heavy-handed tactics, justified on grounds of national security<sup>22</sup>—pointing to the politics of regulation. This was particularly so during the military dictatorships, which ended in 1999. In that period, media houses faced government backlash and journalists were openly targeted when they deviated from the official state line. There were stories of the government using the repressive state apparatus to intimidate the media and to incarcerate and, in extreme cases, execute reporters and editors.<sup>23</sup> The public broadcasters, the Nigeria Television Authority (NTA) and the Federal Radio Corporation of Nigeria (FRCN), were also established during military rule in 1977 and 1978, respectively. They have largely operated as the government's mouthpiece, in both in military and civilian administrations.

The result is the considerable hold that the government has over the traditional media, particularly broadcasting. Broadcasting in Nigeria, as in many other countries,<sup>24</sup> is highly regulated, at least far more so than the press. One reason is that broadcasting tends to be considered a public utility for which regulation is needed for the fair allocation of spectrum.<sup>25</sup> There is also the belief that broadcasting is pervasive and intrusive.<sup>26</sup> Unlike the print media, which tend to be elitist, broadcasting can be accessed by everybody, having considerable influence as “the most pervasive, powerful means of communication in the world.”<sup>27</sup> It is then unsurprising that governments across the world have kept it under formal regulation, whereas the print media are largely left with self-regulation. The same is true in Nigeria, where broadcasting was kept under state monopoly from its inception in 1932 until liberalization in 1992 made private entry possible. With liberalization also came the establishment of the National Broadcasting Commission (NBC), the regulator. To regulate the sector, the NBC drafted a regulatory code, which is updated fairly frequently in line with changes in the media ecosystem.

<sup>21</sup>OYEWOLE A. OLADAPO & BABATUNDE R. OJEBUYI, NATURE AND OUTCOME OF NIGERIA'S #NOTOSOCIALMEDIABILL TWITTER PROTEST AGAINST THE FRIVOLOUS PETITIONS BILL 2015 106–124 (Okorie Nelson et al. eds., 2017).

<sup>22</sup>Chris Ogbondah & Emmanuel U. Onyedike, *Origins and Interpretations of Nigerian Press Laws*, 5 AFRICAN MEDIA REVIEW 2, 59–70 (1991).

<sup>23</sup>June 12: PUNCH's Triumph in 25-Year Legal Battle, *Punch* (June 17, 2019), <https://punchng.com/june-12-punchs-triumph-in-25-year-legal-battle>.

<sup>24</sup>See ZEYNEP TUFEKCI, TWITTER AND TEAR GAS: THE POWER AND FRAGILITY OF NETWORKED PROTEST (2017).

<sup>25</sup>Mark Conrad, *The New Paradigm for American Broadcasting—Changing the Content Regulation Regimen in the Age of New Media*, 24 INTERNATIONAL REVIEW OF LAW, COMPUTERS & TECHNOLOGY 3, 241–250 (2010). See also AMIT M. SCHEJTER, MEDIA REGULATION AND POLICY (Philip M. Napoli, ed., 2018).

<sup>26</sup>Eve Salomon, *Guidelines for Broadcasting Regulation* (2nd ed.), <https://www.legalbluebook.com/bluebook/v21/quick-style-guide>.

<sup>27</sup>See Salomon, *supra* note 26.

The latest version is the amended 6th edition,<sup>28</sup> which was brought in partly to address how television and radio stations handle “user-generated content”—in other words, citizen journalism and social media material.

Even though democracy has come to Nigeria, the indication is that the government still censors freedom of expression, using national security justifications.<sup>29</sup> National security concerns are further tied to research on securitization, which happens when an exceptional measure beyond the purview of normal politics is applied to address a situation likely to affect the functioning of a state.<sup>30</sup> These measures include employing secrecy, levying taxes, and restricting otherwise inviolable rights.<sup>31</sup> For this study, I am particularly interested in the securitization of speech acts, where anyone in authority can employ the instrument of securitization just by declaring an issue to be one, taking up the right to do whatever is necessary to combat the “threat.”<sup>32</sup> The indication, therefore, is that securitization is a discursive instrument of power wielded by influential figures such as state actors, who have the means to apply it to a health emergency such as COVID-19 or the regulation of broadcast speech, even if the underlying justification is untenable. The consequence is that in the Nigerian context, people (and civil society groups) tend to be suspicious of government regulation that implicates free expression, even in the slightest way, regardless of the justifications that the government puts forward. It is this that shapes the regulatory outlook both for broadcasting and social media in Nigeria. This also points to the political economic considerations at play as far as social media regulation is concerned; it is this that I discuss next.

## Critical Political Economy and Social Media Regulation

This article centers around thinking on critical political economy, which involves “any examination of communications that addresses economic or political aspects.”<sup>33</sup> These economic or political aspects are broken into media ownership, funding, and government policies/regulations.<sup>34</sup> Also relevant is the relationship between media power and state power,<sup>35</sup> and the question of whether media practices are influenced by state regulation. Put differently, “Whose interests and what values do government communication policies encourage?”<sup>36</sup> Hence, critical political economy raises questions related to who defines the terms of access to (new) media, what is permissible content and what is not, and how the boundaries of content production are determined. Evident here are notions of power and allocation of resources in the media ecology, leading Mansell to suggest that what is important is an understanding of “the way in which power is structured and differentiated, where it came from and how it is renewed.”<sup>37</sup>

<sup>28</sup>See: <https://bcmcr.org/wp-content/uploads/2023/04/Amended-6th-NBC-Code.pdf>.

<sup>29</sup>Levi Obijiofor, Richard Murray, & Shailendra B. Singh, *Changes in Journalism in Two Post-Authoritarian Non-Western Countries*, INTERNATIONAL COMMUNICATION GAZETTE, 1–21 (2016).

<sup>30</sup>See Wæver, *supra* note 11.

<sup>31</sup>BARRY BUZAN, OLE WÆVER, & JAAP DE WILDE, *SECURITY: A NEW FRAMEWORK FOR ANALYSIS* (1998).

<sup>32</sup>See Wæver, *supra* note 11.

<sup>33</sup>See Hardy, *supra* note 8, at 6.

<sup>34</sup>See Hardy, *supra* note 8. See also Robert W. McChesney, *The Political Economy of Communication and the Future of the Field*, 22 NEW MEDIA & SOCIETY, 109–116 (2000).

<sup>35</sup>See Wasko, *supra* note 9.

<sup>36</sup>See McChesney & Schiller, *supra* note 10, at 3.

<sup>37</sup>Robin Mansell, *Political Economy, Power and New Media*, 6 NEW MEDIA & SOCIETY 1, 99 (2004).

When it comes to social media regulation, those who wield this power tend to be platforms, given the realities of platformization.<sup>38</sup> We see this in the rules of content moderation and terms of service that platforms set and enforce either manually or algorithmically.<sup>39</sup> Platforms have, therefore, attained dominance in regulating digital communication such that Klonick calls them the “New Governors of online speech.”<sup>40</sup> Napoli notes that this regulatory paradigm is steeped in the environment created by Section 230 of the Communications Decency Act, a 1996 U.S. law that specifies the “Good Samaritan” principle, which precludes platforms from liability, whether or not they moderate harmful online content.<sup>41</sup> Similar laws that have set the order for platform-led regulation include the European Union’s (EU) e-Commerce Directive, with its “Safe Harbour” provisions, which came into force in 2000. What we then have is the existence of “fundamentally unequal information environments,”<sup>42</sup> where platforms have the upper hand and regulators always have to play catch-up. Critics of the platform-led regulatory approach further observe that it is tainted by profit motives<sup>43</sup> and that the use of algorithms translates to a lack of transparency and accountability.<sup>44</sup> Other privatized regulatory solutions relate to media literacy,<sup>45</sup> which is usually immune from opposition,<sup>46</sup> and digital detox,<sup>47</sup> which represents “privatized solutions, and governmentality of the user.”<sup>48</sup>

It appears, however, that privatized solutions have not been as effective, leading to calls in the literature for more aggressive regulation by platforms.<sup>49</sup> This is the result of the “global techlash” that social media networks are faced with,<sup>50</sup> which has meant that platforms are “in the midst of a legal and social reckoning.”<sup>51</sup> The consequence, according to Flew, is that the “hands-off” platform-led regulatory approach has become

<sup>38</sup>Poell, Neiborg, & Duffy, see note 16. See also Terry Flew, Fiona Martin, & Nicolas Suzor, *Internet Regulation as Media Policy: Rethinking the Question of Digital Communication Platform Governance*, 10 JOURNAL OF DIGITAL MEDIA & POLICY 1, 33–50 (2019). See also David Kaye, *SPEECH POLICE: THE GLOBAL STRUGGLE TO GOVERN THE INTERNET* (2019).

<sup>39</sup>Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 HARVARD LAW REVIEW, 1598–1670 (2018). See also Mark Zuckerberg, *A Blueprint for Content Governance and Enforcement*, Facebook (Nov. 15, 2018), <https://www.facebook.com/notes/751449002072082>.

<sup>40</sup>See Klonick, *supra* note 38, at 1602.

<sup>41</sup>PHILIP M. NAPOLI, *SOCIAL MEDIA AND THE PUBLIC INTEREST: MEDIA REGULATION IN THE DISINFORMATION AGE* (2019).

<sup>42</sup>Bridget Barrett & Daniel Kreiss, *Platform Transience: Changes in Facebook’s Policies, Procedures, and Affordances in Global Electoral Politics*, 8 INTERNET POLICY REVIEW 4, 1–22, 16 (2019).

<sup>43</sup>DAMIAN TAMBINI, DANILO LEONARDI, & CHRIS MARSDEN, *CODIFYING CYBERSPACE: COMMUNICATIONS AND SELF-REGULATION IN THE AGE OF INTERNET CONVERGENCE* (2008). See also TARLETON GILLESPIE, *CUSTODIANS OF THE INTERNET: PLATFORMS, CONTENT MODERATION, AND THE HIDDEN DECISIONS THAT SHAPE SOCIAL MEDIA* (2018). See also Nicolas Suzor, *Digital Constitutionalism: Using the Rule of Law to Evaluate the Legitimacy of Governance by Platforms*, SOCIAL MEDIA + SOCIETY, 1–11 (2018).

<sup>44</sup>*Content Regulation in the Digital Age*, Association for Progressive Communications (APC), <https://www.ohchr.org/sites/default/files/Documents/Issues/Opinion/ContentRegulation/APC.pdf>. See also Barrett & Kreiss, *supra* note 41.

<sup>45</sup>PETER LUNT & SONIA LIVINGSTONE, *MEDIA REGULATION: GOVERNANCE AND THE INTERESTS OF CITIZENS AND CONSUMERS* (2012).

<sup>46</sup>Zoë Druick, *The Myth of Media Literacy*, 10 INT’L JOURNAL OF COMMUNICATION 1125–1144 (2016).

<sup>47</sup>Ana Jorge, *Social Media, Interrupted: Users Recounting Temporary Disconnection on Instagram*, SOCIAL MEDIA + SOCIETY, 1–19 (2019). See also Adam Fish, *Technology Retreats and the Politics of Social Media*, 15 TRIPLE-C 1, 355–69 (2017). See also Theodora Sutton, *Disconnect to Reconnect: The Food/Technology Metaphor in Digital Detoxing*, 22 FIRST MONDAY 6 (2017), <https://doi.org/10.5210/fm.v22i6.7561>. See also TRINE SYVERTSEN, *MEDIA RESISTANCE: PROTEST, DISLIKE, ABSTENTION* (2017). See also Anne Kaun & Emiliano Treré, *Repression, Resistance and Lifestyle: Charting (Dis)Connection and Activism in Times of Accelerated Capitalism*, 19 SOCIAL MOVEMENT STUDIES 5–6, 697–715 (2020).

<sup>48</sup>See Jorge, *supra* note 48, at 18.

<sup>49</sup>*Social Media Companies Should Self-Regulate. Now*, HARVARD BUSINESS REVIEW (Jan. 15, 2021), <https://hbr.org/2021/01/social-media-companies-should-self-regulate-now>.

<sup>50</sup>TERRY FLEW, *BEYOND THE PARADOX OF TRUST AND DIGITAL PLATFORMS: POPULISM AND THE RESHAPING OF INTERNET REGULATIONS* 281–309 at 299 (Terry Flew & Fiona Martin eds., 2022).

<sup>51</sup>Alex Rochefort, *Regulating Social Media Platforms: A Comparative Policy Analysis*, 25 COMM. LAW & POLICY 2, 225–260, 228 (2020).



increasingly unpopular; he concludes that state regulation of social media in both liberal and authoritarian countries will become the norm.<sup>52</sup> Consequently, there is an almost East–West split in the scholarship. For the West and liberal democracies there, Rochefort notes that state-led regulation can either be limited or comprehensive.<sup>53</sup> Limited government intervention generally involves “narrowly defined standards of industry conduct by public authorities.”<sup>54</sup> Examples include digital constitutionalist measures<sup>55</sup> such as the Honest Ads Act in the United States and the NetzDG in Germany—they mandate social media platforms to take greater action against problematic content but do not address broader structural issues. By contrast, comprehensive regulation focuses on systemic issues or fundamental normative concerns related to platform data extraction and business models. Instances include calls to regulate platforms as public utilities<sup>56</sup> or regulation that focuses on platform architecture.<sup>57</sup>

For authoritarian countries like China, where censorship tends to be extreme, studies indicate that the regulatory framework there can be understood as the Great Firewall,<sup>58</sup> censorship targeting collective expression,<sup>59</sup> or technological surveillance.<sup>60</sup> Countries like Nigeria, however, are in the midst of these East–West extremes. The few studies that have considered the Nigerian context include Garbe et al.,<sup>61</sup> which only considers news reports on fake news and hate speech regulation in Africa, and Roberts et al.,<sup>62</sup> which analyzes surveillance laws and practices in six African countries, including Nigeria. In other parts of the Global South, researchers have considered Internet and social media bans.<sup>63</sup> My research builds on these studies as I seek to define a conceptual framework that captures social media regulation in countries like Nigeria and the power dynamics that shape regulation in an African context.

## Methodological Approach

For this article, I used a triangulated methodological approach that combined policy analysis of legal instruments on social media usage in Africa and case study of media coverage of the 2012 Occupy Nigeria protests and the 2020 #EndSARS movement. I also drew on the reflections of social media users who engaged with the

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<sup>52</sup>See Flew, *supra* note 49, at 299.

<sup>53</sup>See Rochefort, *supra* note 50.

<sup>54</sup>See Rochefort, *supra* note 50, at 235.

<sup>55</sup>Edoardo Celeste, *Digital Constitutionalism: Mapping the Constitutional Response to Digital Technology's Challenges*, HIIG Discussion Paper Series (Aug. 9, 2018), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3219905](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3219905). See also De Grogorio, *supra* note 13.

<sup>56</sup>See Rochefort, *supra* note 50.

<sup>57</sup>Frank Fagan, *Systemic Social Media Regulation*, 16 DUKE LAW & TECH. REV. 1, 393–439 (2018). See also Poppy Wood, *Online Harms: Why We Need a Systems-Based Approach Towards Internet Regulation*, LSE Media Blog (Feb. 19, 2021), <https://blogs.lse.ac.uk/medialse/2021/02/19/online-harms-why-we-need-a-systems-based-approach-towards-internet-regulation>.

<sup>58</sup>See deLisle et al., *supra* note 14.

<sup>59</sup>Garry King, Jennifer Pan, & Margaret E. Roberts, *How Censorship in China Allows Government Criticism but Silences Collective Expression*, 107 AMERICAN POLITICAL SCIENCE REV. 2, 326–343 (2013).

<sup>60</sup>NICK COULDREY & ULISES A. MEJIAS, *THE COST OF CONNECTION: HOW DATA IS COLONIZING HUMAN LIFE AND APPROPRIATING IT FOR CAPITALISM* (2019).

<sup>61</sup>Lisa Garbe, Lisa-Marie Selvik, & Pauline Lemaire, *How African Countries Respond to Fake News and Hate Speech*, INFORMATION, COMMUNICATION & SOCIETY, 1–18 (2021).

<sup>62</sup>Tony Roberts et al., *Surveillance Law in Africa: A Review of Six Countries*, Institute of Development Studies (2021), [https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/16893/Roberts\\_Surveillance\\_Law\\_in\\_Africa.pdf?sequence=1&isAllowed=y](https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/16893/Roberts_Surveillance_Law_in_Africa.pdf?sequence=1&isAllowed=y).

<sup>63</sup>See Eltantawy & Wiest, *supra* note 15. See also Wagner, *supra* note 15.

#SayNoToSocialMediaBill Twitter hashtag between December 2019 and December 2020.<sup>64</sup> The #SayNoToSocialMediaBill hashtag was used to oppose the Internet Falsehood Bill when it was introduced in the Nigerian National Assembly in November 2019. The use of the hashtag petered out in 2020 until October of that year, when Twitter users deployed it in connection with the #EndSARS movement after governors of Nigeria's 19 northern states noted that social media must be regulated, given what they saw as the chaos that was #EndSARS.<sup>65</sup> Although the Nigerian example was my emphasis, I touched on other cases in Africa to highlight the existing and emerging African policy move to “sanitize” social media.

Policy analysis was particularly useful given my focus on the discursive formats and the wordings used in the regulatory instruments. It is also the primary method for scholars interested in media and Internet regulatory policies.<sup>66</sup> Overall, the documents that I reviewed included legal documents, proposals (bills), online resources, press releases, and news reports. In Nigeria, the primary documents that I considered were the following:

1. Internet Falsehood Bill,<sup>67</sup> 2019: Officially known as the Protection from Internet Falsehoods and Manipulation and Other Related Matters Bill, it aims to criminalize the spread of online falsehood, using tools of sanction such as correction notices, take down orders, blockage, fines, and imprisonment.
2. Hate Speech Bill,<sup>68</sup> 2019: Officially known as a Bill for an Act to Provide for the Prohibition of Hate Speeches and for Other Related Matters, it plans to allow for complaints to be made to a proposed Hate Speech Commission for conciliation; further sanctions include imprisonment and possible death penalty for hate speech offenses that lead to loss of life.
3. Cybercrimes Act,<sup>69</sup> 2015: A law that protects critical national information infrastructure, but also targets cyberstalking and online falsehood.
4. Frivolous Petitions Bill,<sup>70</sup> 2015: It was known as a Bill for an Act to Prohibit Frivolous Petitions and Other Matters Connected Therewith; it targeted the spread on social media of petitions without a court affidavit, abusive statements, and false complaints on social media.

Although the Frivolous Petitions Bill has been withdrawn, I note that it is relevant in terms of providing insight into the recent regulatory approach in Nigeria and how this is reflected in the Internet Falsehood Bill. For the wider African approach, I conducted Internet searches to locate existing policies on social media regulation in the 54 African

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<sup>64</sup>An in-depth analysis of the #SayNoToSocialMediaBill data, which is outside the scope of the present study, is something that I consider in the wider research on which this article is based. For that wider research, I used Twitter Archive Google Sheets (TAGS) to collect 232,962 tweets on the hashtag and the analysis was done using corpus linguistics and critical discourse analysis. But for the present study, I only draw from the hashtag to provide a sense of how the hashtag users perceived broadcast media coverage of the #EndSARS movement.

<sup>65</sup>*Northern Governors Call for Social Media Censorship in Nigeria*, THE GUARDIAN (Nov. 3, 2020), <https://guardian.ng/news/northern-governors-calls-for-social-media-censorship-in-nigeria>.

<sup>66</sup>See John C. Reinard & Sanra M. Ortiz, *Communication Law and Policy: The State of Research and Theory*, 55 JOURNAL OF COMMUNICATION, 594–631 (2005). See also Edward L. Carter, *Mass Communication Law and Policy Research and the Values of Free Expression*, 94 JOURNALISM & MASS COMMUNICATION QUARTERLY 3, 641–662 (2017).

<sup>67</sup>See <https://bcmcr.org/wp-content/uploads/2023/02/Social-Media-Bill-3.pdf>.

<sup>68</sup>See <https://bcmcr.org/wp-content/uploads/2023/02/Hate-Speech-Bill.pdf>.

<sup>69</sup>See [https://www.cert.gov.ng/ngcert/resources/CyberCrime\\_Prohibition\\_Prevention\\_etc\\_Act\\_2015.pdf](https://www.cert.gov.ng/ngcert/resources/CyberCrime_Prohibition_Prevention_etc_Act_2015.pdf).

<sup>70</sup>See <https://bcmcr.org/wp-content/uploads/2023/02/SB143-Frivolous-Petitions-Bill.pdf>.

**Table 1.** Countries with social media policies in Africa.

Legal restrictions	Bills/proposals	Social media ban	Registration	Social media tax
Angola	Ivory Coast	Burundi	Benin	Benin
Burkina Faso	Morocco	Chad	Egypt	Uganda
DR Congo	Namibia	Congo	Lesotho	Zambia
Egypt	Nigeria	DR Congo	Tanzania	
Ethiopia	Zimbabwe	Egypt	Uganda	
Kenya		Equatorial Guinea		
Madagascar		Eritrea		
Malawi		Ethiopia		
Mali		Gabon		
Mauritania		Guinea		
Niger		Liberia		
Nigeria		Mali		
South Africa		Nigeria		
Sudan		Senegal		
Tanzania		Sudan		
Zambia		Togo		
		Uganda		

countries. My search showed that of these, 33 countries had at least one legal policy approach aimed at combatting online harms (see Table 1, shown later). These countries formed the basis for my wider review.

The overarching framework that I used for the policy analysis and selected case studies was the regulatory analysis framework developed by Lodge and Wegrich.<sup>71</sup> This approach assumes that regulation takes on a number of options involving trade-offs, side effects, and a consideration of different interests. It addresses my research focus, which involves legal approaches to the regulation of social media in Nigeria, the wider African context, and the underlying interests that find expression with regard to issues like freedom of expression and securitization. In many ways, regulatory analysis is based on the rise of the regulatory state<sup>72</sup> and it disproves the notion that regulation is apolitical. This means regulation, as an activity taking place in “living systems,” involves “a set of core ideas that are advocated by those sharing these ideas, and that are opposed by those who have other views regarding cause–effect relationships.”<sup>73</sup> In other words, regulation is primarily based on the contest of ideas/interests between the actors of concern, pointing to the political backdrop under which regulation is set.

It is the consideration of this underlying political context that makes the framework particularly useful. In this article, I considered the interests behind the state policy attempts at combatting social media disinformation by looking at the constituent parts of the regulatory analysis framework, or what Lodge and Wegrich call the “regulatory regime.” These included standard setting, information gathering, and enforcement/behavior modification. My emphasis was on standard setting: that is, the goals, objectives, and motivations behind a regulatory approach. This allowed me to consider both the stated and underlying reasons for regulation aimed at social media, and how they can be explained by the discourse on political economy. It is on this premise that I advanced the concept of regulatory annexation, where new media regulation becomes an extension of broadcasting media regulation.

<sup>71</sup>MARTIN LODGE & KAI WEGRICH, *MANAGING REGULATION: REGULATORY ANALYSIS, POLITICS AND POLICY* (2012).

<sup>72</sup>See Giandomenico Majone, *From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance*, 17 *JOURNAL OF PUBLIC POLICY* 2, 139–167 (1997).

<sup>73</sup>See Lodge & Wegrich, *supra* note 69 at 37.

## Broadcast Media Regulation as a Backdrop for Regulatory Annexation

As a starting point for my discussion on regulatory annexation, I touch on the wider politics of regulation. This refers to regulation, which, although favoring political and state actors, is justified on public interest grounds such as national security and is expressed in terms related to the securitization of speech acts.<sup>74</sup> Hence, I refer to discourse on the political economy of media control to show how state regulation has influenced broadcast coverage during politically sensitive periods. My case studies are the 2012 Occupy Nigeria protest and the 2020 #EndSARS movement, two of the largest demonstrations to have happened in Nigeria since the return to civilian rule in 1999. I am interested in showing the vulnerability that the broadcast media had in covering both protests. In general, both cases point to a strikingly similar pattern of reportage that I suggest can be explained by the regulatory hold that the government has over broadcasting. The #EndSARS case study is particularly significant because it reveals the tendency the government has to censor activist discourse on social media—an indication of not just media capture, but also social media capture.

To provide a background, the Occupy Nigeria protests took place on 2–14 January 2012, after the removal of fuel subsidy by the Goodluck Jonathan Administration. The effect was a spike in the price of a liter of gasoline from 65 naira to approximately 145 naira. To put things in context, the USD exchange rate at the time was \$1 to 164.62 naira<sup>75</sup> and monthly minimum wage was 18,000 naira. Spontaneous nationwide protests broke out afterward, lasting days until partial subsidy was introduced to make the liter price 97 naira. The #EndSARS movement was also spontaneous. It represented a mix of social media and off-line activism as young Nigerians demanded that the Special Anti-Robbery Squad (SARS) of the Nigerian Police be scrapped by the Muhammadu Buhari Administration—the unit was accused of brutality, highhandedness, and extrajudicial killings. Protests began on 8 October 2020, after SARS officers reportedly murdered a man in the Delta Region, in the south of Nigeria. The agitation against SARS had been building up since 2016, with intermittent demonstrations, but these were always small protest events. By contrast, the 2020 protests were widespread and lasted for weeks, snowballing into a broader campaign on socioeconomic conditions. The protests continued even after the Inspector-General of Police announced the disbandment of SARS on 11 October. The announcement, however, was received by the protesters with skepticism, given that SARS had been “banned” repeatedly on previous occasions—further pointing to state–citizen distrust. Eventually, on 20 October 2020, soldiers in Lagos were mobilized to Lekki Toll Gate, the ground zero for the protests. An official report by the Lagos State Judicial Panel of Inquiry revealed that soldiers shot at and killed unarmed protesters at the Toll Gate,<sup>76</sup> a report that the Nigerian government rejected.<sup>77</sup> Events degenerated into violence from there and the protests ended.

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<sup>74</sup>See Wæver, *supra* note 11.

<sup>75</sup>This is according to the official Central Bank of Nigeria (Bureau de Change) exchange rate as of January 2012. See <https://www.cbn.gov.ng/rates/exrate.asp?year=2012>.

<sup>76</sup>Lagos State Judicial Panel of Inquiry on Restitution for Victims of SARS Related Abuses and Other Matters, <https://lagosstatemoj.org/wp-content/uploads/2021/12/Report-of-Judicial-Panel-of-Inquiry-on-Lekki-incident-investigation-of-20th-October-2020.pdf>. See also *Nigeria: Killing of #EndSARS Protesters by the Military Must Be Investigated*, Amnesty International (Oct. 21, 2020), <https://www.amnesty.org/en/latest/news/2020/10/killing-of-endsars-protesters-by-the-military-must-be-investigated>.

<sup>77</sup>Nigerian Government Rejects Report on Lekki Toll Gate Shooting as ‘Fake News’, CNN (Nov. 24, 2021), [https://edition.cnn.com/2021/11/24/africa/nigeria-rejects-endsars-report-intl/index.html#:~:text=Abuja%2C%20Nigeria%20\(CNN\)%20Nigeria's,officials%20tried%20to%20cover%20up](https://edition.cnn.com/2021/11/24/africa/nigeria-rejects-endsars-report-intl/index.html#:~:text=Abuja%2C%20Nigeria%20(CNN)%20Nigeria's,officials%20tried%20to%20cover%20up).

My major aim for discussing both events is to highlight how the media reported them, and the regulatory pressures (if any) that the media faced while covering them. Additionally, both events represent how social media became the site for citizen activism against the state, and how this activism shapes and is shaped by regulation. Hence, I use the case studies to explore state–citizen, state–media, and state–media–citizen relations, which further highlight the distrust that people have for social media regulation. For instance, during the 2012 Occupy Nigeria protests, Uwalaka and Watkins note that the public broadcaster—the Nigeria Television Authority (NTA)—did not report on the protests.<sup>78</sup> They recount a case where the protesters were angry that NTA aired swimming lessons while the protest was ongoing. The protesters then resorted to posting #OccupyNTA messages online. It was not until protesters demonstrated at NTA premises that the station began coverage of the protest. The reluctance NTA had in reporting the protest can be explained since that the station is partly government funded, and most of the protesters were critical of the government, with some demanding the resignation of President Goodluck Jonathan. The case was different for privately owned broadcasting outfits that covered the protests. For example, Television Continental (TVC) began full broadcast of the protests on 9 January 2012. However, Uwalaka and Watkins found that the station was threatened with sanctions by the NBC, the broadcasting regulator, if the station did not censor criticisms of the President.<sup>79</sup> Hence, they observe that the threat of sanctions partly led to a situation where broadcasters were cautious in their coverage of the protests.

By contrast, the print media faced little or no regulatory backlash and had no threat of sanctions to worry about. On this front, Egbunike and Olorunnisola, in their research into the 2012 protests, found that the print media were successful in contributing to the outcome of the protests, which was the partial restoration of the fuel subsidy.<sup>80</sup> To do this, they note that the press used a combination of frames to make possible a compromise that the government accepted. As opposed to Uwalaka and Watkins, therefore, Egbunike and Olorunnisola seem to indicate that the traditional media was active in shaping the 2012 protests. I suggest that this shows the critical role regulation plays in determining how the Nigerian media cover events such as activist movements that the government may consider offensive. On the whole, broadcasting, which is tightly regulated, reflects the subalternity that Ogunleye refers to,<sup>81</sup> while the print media, being loosely regulated, is generally more vibrant, as Tsado points out.<sup>82</sup>

There are similar patterns in the perception of media coverage of the #EndSARS protests. This was part of my analysis of the #SayNoToSocialMediaBill Twitter corpus, which was jointly used with the #EndSARS hashtag after Lai Mohammed, the information and culture minister, and governors of the 19 northern states<sup>83</sup> said social media

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<sup>78</sup>See Uwalaka & Watkins, *supra* note 20.

<sup>79</sup>See Uwalaka & Watkins, *supra* note 20.

<sup>80</sup>Nwachukwu Egbunike & Anthony Olorunnisola, *Social Media and the #Occupy Nigeria Protests: Igniting or Dampening a Harmattan Storm?*, 7 JOURNAL OF AFRICAN MEDIA STUDIES 2, 141–164 (2015).

<sup>81</sup>Yemisi Ogunleye, *Let the Subaltern Speak! Bringing the African News Media into the 21st Century* (2010) (PhD Thesis, Birmingham City University).

<sup>82</sup>Jacob S. Tsado, *Reporting Violence or Mediating Peace? The Nigerian Press and the Dilemma of Peace Building in a Democracy* (2016) (PhD Thesis, Birmingham City University).

<sup>83</sup>Nigeria is made up of 36 states: 19 in the north and 17 in the south. The north is generally more conservative and tends to be in favor of social media regulation.

must be regulated in the aftermath of the protests. I found that those using the #EndSARS tag largely expressed dissatisfaction with what they saw as the refusal of broadcasting stations to cover the protests. One of them interpreted this as being because “they (the ruling political elites) gagged traditional media houses.”<sup>84</sup> This reinforced the importance they attached to social media as their means of unfettered expression. In their tweets, they made appeals to international media outlets like CNN to cover the protest. One tweet read “@CNN We can’t breath [sic] in Nigeria!!! #EndSARS ... #SayNoToSocialMediaBill.” Locally, the only broadcast station the hashtag users seemed to be happy with was Arise TV, for what they construed as fearless reportage of the protests. This seeming reluctance on the part of most broadcast outlets, including private stations, to cover the protest indicates the atmosphere of intimidation that broadcasters operate under. On the face of it, reporting on the protests would not have violated the NBC regulation. Still, it seemed that broadcasters were wary of an unwritten backlash, as Ogunleye alludes to.<sup>85</sup>

This backlash came after the Lekki Toll Gate shootings. The NBC imposed fines of 3,000,000 naira each on three private television stations: Arise TV, Channels TV, and Africa Independent Television (AIT).<sup>86</sup> They were sanctioned for using what the NBC called “unverified and unauthenticated social media sources” on the protests and the shootings. Prominent among these sources and footage was an Instagram livestreaming of the Lekki shootings by activist DJ Switch, who fled the country afterward due to safety concerns.<sup>87</sup> Similar social media footage was later used by international broadcasters. One of them was CNN, which reported its investigation into the shootings, after which Lai Mohammed, the information and culture minister, said CNN should be sanctioned for reporting on what he called a “fake story.”<sup>88</sup> This suggests that if CNN had been under Nigerian jurisdiction, it would have been sanctioned.<sup>89</sup> The fact that the government could say this about an international broadcaster shows the control it wields over local broadcasters, especially when the dissemination of “unwanted” content comes into view.

Other recent cases of sanctions include the imposition of a 5,000,000 naira fine on Nigeria Info,<sup>90</sup> a private radio station in Lagos, on the basis of the hate speech amendment to the broadcasting code, an amendment that was said to have been unilaterally introduced by Lai Mohammed.<sup>91</sup> One should note that the amendment was later ruled by a court to be unconstitutional because of its provision on the exclusivity of sporting

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<sup>84</sup>Quote from a tweet in the corpus.

<sup>85</sup>See Ogunleye, *supra* note 79.

<sup>86</sup>NBC Fines Arise TV, Channels, AIT Over ‘Unprofessional Coverage’ of #EndSARS Protest, THE GUARDIAN (Oct. 26, 2020), <https://guardian.ng/news/nbc-fines-arise-tv-channels-ait-over-unprofessional-coverage-of-endsars-protest>.

<sup>87</sup>She Livestreamed the Shooting of Peaceful Protesters in Lagos. Now in Exile, DJ Switch is Still Fighting for the Future of Nigeria, TIME (Dec. 17, 2020), <https://time.com/5922305/dj-switch-nigeria-endsars>.

<sup>88</sup>FG Threatens to Sanction CNN Over Lekki Shootings Report, THE GUARDIAN (Nov. 19, 2020), <https://guardian.ng/news/fg-threatens-to-sanction-cnn-over-lekki-shootings-report>.

<sup>89</sup>One should note that Stephanie Busari (a Nigerian), the head of the CNN Nigeria bureau at the time, was in Nigeria, reporting on the movement. Yet the state left her undisturbed, suggesting that her international affiliation deterred government.

<sup>90</sup>The National Broadcasting Commission Fines Nigeria Info 99.3FM for Unprofessional Broadcast, Federal Ministry of Information & Culture (Aug. 13, 2020), <https://fmic.gov.ng/the-national-broadcasting-commission-fines-nigeria-info-99-3fm-for-unprofessional-broadcast>.

<sup>91</sup>Outrage as NBC Fines Radio Station N5m for Hate Speech, This Day, 2020, <https://www.thisdaylive.com/index.php/2020/08/14/outrage-as-nbc-fines-radio-station-n5m-for-hate-speech>.

rights.<sup>92</sup> Among other things, the amendment criminalizes any broadcast that leads to public disorder, is repugnant to public feelings, or contains an offensive reference to any person or organization.<sup>93</sup> This provision widens the remit of a concept like “offensive reference” from normative hate speech to criminal hate speech.<sup>94</sup> Also, on 26 April 2021, Channels TV was issued a “regulatory instrument” or letter from the NBC containing a warning of a possible 5,000,000 naira fine and suspension of license.<sup>95</sup> In the letter, the station was condemned for a live program interview of Emma Powerful, the leader of the Indigenous People of Biafra (IPOB), a secessionist group, who was said to have made “secessionist and inciting declarations on air without caution.”<sup>96</sup> There are indications that the NBC has previously issued other letters like this serving as regulatory instruments. For instance, a news report shows that in late 2018 when a video of Abdullahi Ganduje, Governor of Kano State, in northwest Nigeria, surfaced showing him receiving a bribe in dollars, the NBC sent a circular to all broadcast outlets warning that the video should not be relayed in full or in part.<sup>97</sup>

I point to these cases to highlight the strict regulatory context that exists for broadcasting where the dissemination of materials deemed to be unwanted by government is tightly policed. It also suggests that the watchdog function of journalism in Nigeria is endangered, a sign of the political economy of media capture through censorship. In terms of media capture in Sub-Saharan Africa, Cardenas et al. describe the journalistic intimidation caused by unwritten rules as noncoercive, while direct government intervention in shutting down a station for instance is coercive.<sup>98</sup> Hence, they note that the media in developing regions such as Africa usually cannot afford to report information that threatens or displeases the authorities for fear of the application of vague legislations. Mabweazara et al. have also come up with a typology of media capture in Africa, one that includes legal and administrative regulation.<sup>99</sup> According to them, “regulatory frameworks are the main cog for the curtailment of journalistic autonomy by controlling the administrative elements around licensing, funding and other aspects of media development and management in sub-Saharan Africa.”<sup>100</sup> The aim is then to secure the interest of the ruling political and economic elite, and its motivation is to maintain the power structure by preventing government criticism.

These cases provide the context for the politics of regulation and enable an understanding of the wider setting within which social media regulation finds expression. In

<sup>92</sup>*Court Rules Nigerian Govt Cannot Implement Controversial NBC Code*, PREMIUM TIMES (May 27, 2022), <https://www.premiumtimesng.com/news/more-news/532896-court-rules-nigerian-govt-cannot-implement-controversial-nbc-code.html>.

<sup>93</sup>Amendment to the Sixth NBC Code, 2020 § 3.0.2.1. <https://bcmcr.org/wp-content/uploads/2023/04/Amended-6th-NBC-Code.pdf>.

<sup>94</sup>For information on the categories of hate speech, see Iginio Gagliardone, Danit Gal, Thiago Alves, & Gabriela Martinez, *Countering Online Hate Speech*, UNESCO (2015), <https://unesdoc.unesco.org/ark:/48223/pf0000233231>.

<sup>95</sup>*IPOB Interview: Channels TV Has Apologised for Breaching Broadcast Code, Says NBC*, THE CABLE (Apr. 27, 2021), <https://www.thecable.ng/ipob-interview-channels-tv-has-apologised-for-breaching-broadcast-code-says-nbc>.

<sup>96</sup>*NBC Suspends Channels Television, Fines Station N5m*, THE GUARDIAN (Apr. 26, 2021), <https://guardian.ng/news/nigerian-government-suspends-channels-tvs-politics-today>.

<sup>97</sup>*Nigerian Government Moves to Cage the Last Untamed Media Space*, News Wire NGR (Nov. 26, 2019), <https://newswirengr.com/2019/11/26/nigerian-government-moves-to-cage-the-last-untamed-media-space>.

<sup>98</sup>Pamela J. Cardenas, Antony Declercq, & Mandy S. Lai, & Nathan Rasquinet, *The Political Economy of Media Capture*, LSE Master of Public Administration Caption Report, [https://assets.publishing.service.gov.uk/media/58d131dde5274a16e800076/1.LSE\\_Capstone\\_Final\\_Report\\_for\\_DFID\\_WB\\_09Mar2017.pdf](https://assets.publishing.service.gov.uk/media/58d131dde5274a16e800076/1.LSE_Capstone_Final_Report_for_DFID_WB_09Mar2017.pdf).

<sup>99</sup>See Mabweazara et al., *supra* note 12.

<sup>100</sup>See Mabweazara et al., *supra* note 12 at 2162.

other words, I suggest that broadcasting regulation in Nigeria is relevant for the how and why of social media regulation. In terms of *how*, there is an indication that social media regulation largely mirrors the regulation of broadcasting as outlined in this section. I build on this argument in the next section. When it comes to *why*, the politics of it all becomes relevant as the government moves to silence “offensive” posts and activist discourse on social media. This is important because social media, particularly Twitter, have become central to activism in Nigeria, despite attempts to regulate them. This was evident during the #EndSARS protests, where social media was used to organize, coordinate, and amplify the movement.<sup>101</sup> It is then not surprising that the rhetoric on social media regulation was loudest in the aftermath of the protests. I have already referred to Lai Mohammed, who said “social media must be regulated” to prevent what he saw as the spread of fake news fuelled by online posts on the protests.<sup>102</sup> However, the likelihood is that the language of online harms masks the need to protect the political establishment from criticism and activist discourse. I show in this section that we already see this with the censorship and intimidation that broadcasters face, presenting it as a case of the political economy of media control by government. The regulatory context I highlight here provides a backdrop for my concept of regulatory annexation—the fact that social media legislations mirror broadcasting regulation. It also points to why and how social media users are deemed, just like broadcasters, to be publishers responsible for what they post. I turn to these areas next.

## The Regulatory Annexation Concept

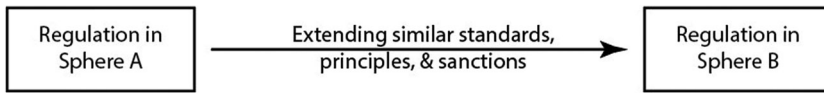
Drawing from my analysis of the policies on broadcasting and social media regulation, I point to the existence of what I call *regulatory annexation*. I define regulatory annexation as the extension of standards, principles, and sanctions originally meant for a particular frame of reference to another. In light of my research, regulatory annexation explains the way in which social media regulation in Nigeria mirrors traditional media regulation. Hence, social media usage is “annexed” in regulatory terms. As shown in [Figure 1](#), the regulatory annexation model refers to a situation where regulators view two or more ordinarily different spheres (broadcasting and social media in my case) as objects requiring a similar governance approach. I use the term “regulators” in this sense to refer broadly to the Nigerian government, which has powers to enact and enforce legislations such as the Cybercrimes Act. “Regulators” also refers to the NBC, which has a specific remit for broadcasting. Although the NBC regulates broadcasting, it remains under the control of the Nigerian government, particularly the Minister of Information and Culture acting on behalf of the President. The President appoints the board of the commission, grants broadcasting licenses, and has a definitive say in the drafting of the NBC Code, as I pointed to earlier in the unilateral amendment of the Code by Lai Mohammed.

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<sup>101</sup>Vincent Obia, #EndSARS, a Unique Twittersphere and Social Media Regulation in Nigeria, LSE Media Blog (Nov. 11, 2020), <https://blogs.lse.ac.uk/medialse/2020/11/11/endsars-a-unique-twittersphere-and-social-media-regulation-in-nigeria>.

<sup>102</sup>Nigerian Govt ‘Must’ Regulate Social Media—Minister, PREMIUM TIMES (Oct. 31, 2020), <https://www.premiumtimesng.com/news/headlines/423969-nigerian-govt-must-regulate-social-media-minister.html>.





**Figure 1.** The regulatory annexation model.

Therefore, it is the case that broadcasting remains generally under the influence of the government despite the 1992 liberalization. Regulatory annexation then refers to a situation where control of this sort by government is extended to other media forms, especially social media content. To establish this, I compare social media legislations (Internet Falsehood Bill, Hate Speech Bill, Cybercrimes Act, and Frivolous Petitions Bill) with existing broadcasting regulation (the NBC Code, 6th Edition<sup>103</sup>) to show that the government seeks to regulate social media in the same manner that the NBC regulates broadcasting. I also make the argument that regulatory annexation is being applied to other new media forms, such as online broadcasting and Internet usage more broadly. By way of structure, I explain the regulatory annexation concept under the following points: (1) the semblance between broadcast media regulation and social media legislations; (2) broadcast media regulation as the annexation of online audiovisual content, including social media; and (3) social media users as publishers, as the premise for regulatory annexation. I begin with the first two points before discussing the concept of social media users as publishers.

On the first point, I found that the semblance between the instruments on social media regulation and broadcasting regulation in Nigeria is most explicit in their standard-setting provisions. For instance, the NBC Code as part of its standard setting states the following:

The cardinal responsibility of broadcasting to inform, educate and entertain shall not be at the expense of national interest, unity and cohesion of Nigeria's diverse social, cultural, economic, political and religious configurations.<sup>104</sup>

I note that this provision on protecting “national interest, unity and cohesion” is closely related to the “national security” justification in the instruments on social media regulation. We see this in the fact that the NBC Code specifies that broadcasting should not “incite to crime, lead to public disorder or be repugnant to public feeling or contain an offensive reference to any person, alive or dead, or generally, be disrespectful to human dignity.”<sup>105</sup> This provision is mirrored in terms of substance in the Frivolous Petitions Bill, which criminalized the publication of “any abusive statement” on social media “knowing same to be false with the intent to set the public against any person and/or group of persons” including “an institution of government.”<sup>106</sup> Also, provisions in the NBC Code such as “an offensive reference to any person” highlight issues of vagueness and general applicability that are present in the instruments on social media regulation such as the Frivolous Petitions Bill.

Perhaps more consequential is the question of who determines what is inciting or repugnant or disrespectful. This power lies with an agency of government (such as the police or “Law Enforcement Department”<sup>107</sup>) when it comes to the Internet Falsehood

<sup>103</sup>See: <https://www.nta.ng/wp-content/uploads/2019/09/1494416213-NBC-Code-6TH-EDITION.pdf>.

<sup>104</sup>NBC Code, 6th Edition, § 0.2.1.

<sup>105</sup>NBC Code, 6th Edition, § 0.2.1.

<sup>106</sup>Frivolous Petitions Bill, § 3(4).

<sup>107</sup>Internet Falsehood Bill, Part 3 & 4 Regulations.

Bill just as it lies with the NBC acting on behalf of the government when it comes to broadcasting. Similarly, the NBC Code refers to falsehood where it states that “Broadcasting shall adhere to the general principles of legality, decency, truth, integrity and respect for human dignity.”<sup>108</sup> Here, I draw parallels with the Internet Falsehood Bill, wherein people are liable for posting “false DECLARATION of fact”<sup>109</sup> on social media and the Internet (original emphasis). The NBC Code also prohibits hate speech, and this is explained as broadcasting likely to provoke “intense dislike, serious contempt or severe ridicule against a person” because of their demography.<sup>110</sup> This is closely related to the Hate Speech Bill, which targets “ethnic discrimination,” “hate speech,” and “harassment”<sup>111</sup> on the basis of people’s demography.

More broadly, the NBC Code is based on professional guidelines and journalistic ethics, requiring broadcasters to adhere to principles of accuracy, objectivity, fairness, and integrity. It also focuses on the policing of morality, as it mandates broadcasters to give particular attention to moral and social issues, including that “cruelty, greed, selfishness and revenge are not portrayed as desirable human values.”<sup>112</sup> Thus, I observe that social media regulation is an attempt to project similar journalistic ethics on social media users, requiring them to be factual and accurate and to not offend anyone in their posts, as we see with the Internet Falsehood Bill and the Frivolous Petitions Bill. However, such an approach that might work for a few licensed stations will undoubtedly prove to be unwieldy when applied to millions of social media users. However, the scapegoat principle can be used to target specific cases on social media to make a wider point.

On the second point, I note that the NBC Code also annexes online broadcasting, making it mandatory for online broadcasting services to be licensed just like a traditional broadcast station. For instance, Section 2.3.1 of the code states that “The Commission shall receive, process and consider applications for the grant of broadcast license in the following categories ... Internet Broadcasting ... Digital TV Content Aggregation ... Over The Top/Video on Demand.” These online broadcasting outlets, alongside traditional broadcast media, are then expected to remit annual income payments to the commission. This provision is restated in the amendment to the code, with the amendment adding that Internet broadcasters are subject to similar programming standards as traditional broadcasters: “Contents on web/online platforms shall conform to the provision of the [NBC] Code on programming standards, especially as it relates to hate speech and fake news.”<sup>113</sup>

The amendment adds that “Web/online platform owners shall bear liability for every content on their platforms.”<sup>114</sup> Sanctions for breaches include a “take-down order, a block or a shutdown order”<sup>115</sup>—reflecting the suspension or revocation of licenses in the NBC Code for traditional broadcasters indicted for the most serious offenses.<sup>116</sup> Licenses, in particular, are tied to critical political economy in African countries. For instance, Mabweazara et al. show that the system of broadcast licenses in Africa is

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<sup>108</sup>NBC Code, 6th Edition, § 0.2.3.

<sup>109</sup>Internet Falsehood Bill, § 6(1)(a).

<sup>110</sup>NBC Code, 6th Edition, § 3.0.2.2.

<sup>111</sup>Sections 3, 4, and 5 of the Hate Speech Bill contain provisions on discrimination, hate speech, and harassment.

<sup>112</sup>NBC Code, 6th Edition, § 3.6.1.

<sup>113</sup>Section 2.12.7.1. Amendment to the 6th Edition of the NBC Code.

<sup>114</sup>Section 2.12.7. Amendment to the 6th Edition of the NBC Code.

<sup>115</sup>Section 2.12.7.2. Amendment to the 6th Edition of the NBC Code.

<sup>116</sup>These are known as Class A sanctions contained Section 15.1.2 of the NBC Code, 6th Edition.

linked to patrimonialism and clientelism, where licenses are “caught up in the patronage networks that are all aimed at maintaining political power.”<sup>117</sup> This points to a system where licenses are only issued to “friends” of government, making the media “beholden to political leaders.”<sup>118</sup> Herman and Chomsky also show that broadcasters, since they require government licensing, function under a “technical legal dependency” that government can use to “discipline the media, and media policies that stray too often from an establishment orientation could activate this threat.”<sup>119</sup> A similar regulatory relationship can then be applied to online broadcasting, which is increasingly becoming associated with social media with platforms like YouTube channels.

Consequently, I refer to the annexation of online broadcasting to highlight the fact that regulatory annexations are usually applied out of context in the sphere unto which they are projected. In other words, they tend to be unfit for purpose. When it comes to online broadcasting, for instance, there is a myriad of podcasts and vlogs. There are also grassroots online broadcasting platforms run by faith-based organizations (e.g., Emmanuel TV),<sup>120</sup> nongovernmental organizations, and several small-scale outreaches. Added to this mix is the live streaming and uploading of audio or audiovisual content to social media platforms such as Facebook, Instagram, and YouTube. It is unclear whether these are included in the definition of online broadcasting, precisely because the NBC Code does not delineate online broadcasting. This leaves room for vagueness in interpreting to whom the rules apply. Licensing online broadcasters might also prove to be impractical, and policing them can be even more problematic. Hence, bringing online broadcasting under the same regime as traditional broadcasting indicates that regulatory annexation in this context has not taken the realities of the online sphere into account.

### **Social Media Users as Publishers**

On the third point, I found that regulatory annexation in the Nigerian context is essentially based on regulating social media users as publishers. This is related to the wider debate on who should be considered a publisher in the new media age. The debate can be traced to the “Good Samaritan” provisions of Section 230 of the U.S. Communications Decency Act, 1996, a law that enables social media platforms to choose whether they are technology intermediaries or media publishers or both. The act states that “No provider or user of an interactive computer service shall be treated as the *publisher* or speaker of any information provided by another information content provider”<sup>121</sup> (emphasis mine). This means that computer network services, such as social media platforms, should be seen as technology intermediaries that are not liable for the content or information provided by users of their platforms. However, Section 230 adds that platforms are still free from liability if they take on the duties of publishers by moderating “objectionable” content in “good faith.”<sup>122</sup> On this account, Section

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<sup>117</sup>See Mabweazara et al., *supra* note 12 at 2171.

<sup>118</sup>See Mabweazara et al., *supra* note 12 at 2160.

<sup>119</sup>EDWARD S. HERMAN & NOAM CHOMSKY, *MANUFACTURING CONSENT: THE POLITICAL ECONOMY OF MASS MEDIA*, 13 (2022).

<sup>120</sup>See <https://emmanuel.tv>.

<sup>121</sup>Communications Decency Act, 1996, § 230 (c)(1).

<sup>122</sup>Communications Decency Act, 1996, § 230 (c)(1).

230 has come under criticism precisely because it has given social media platforms a dual mandate based on American First Amendment principles. For instance, Napoli criticizes it for granting platforms a double advantage of “immunity from liability of common carriers and the editorial authority of publishers.”<sup>123</sup> He argues instead that social media platforms are publishers and should be regulated as such because of their roles in content moderation, news aggregation, and information distribution. Based on this, he reiterates that platforms “operate as *news organizations*, given the extent to which they engage in editorial and gatekeeping decisions related to the flow of information” (original emphasis).<sup>124</sup>

There are indications that this view of platforms as publishers is beginning to take hold in Europe, implying that European countries are deviating from the American position. We see this in the regulatory policies being introduced in places like the United Kingdom, where an Online Safety Bill is being considered. The bill ascribes liability to platforms, placing on them a statutory duty of care to moderate physical and psychological harms. Germany also has the NetzDG, while the European Union has the Digital Services Act. In short, both laws are similar to the UK proposal—they mandate platforms to moderate harmful content or be subject to fines. Therefore, I suggest that the European approach points to labeling platforms as *publishers* and the resultant liability this confers on them. This is different from the underlying principle of Section 230, where platforms can choose where they stand and whether or not they moderate harmful content.

An altogether different approach is being taken in Nigeria, where my review of instruments on social media regulation shows that Internet and social media users, as opposed to platforms, are labeled as publishers who are liable for the content they post. This, as I have explained, is because of regulatory annexation, given that broadcasting regulation cannot be extended to Internet and social media users unless they are classified as publishers. In criminalizing falsehood, for instance, the Internet Falsehood Bill designates users as publishers by making it clear that “A *person* must not do any act in or outside Nigeria in order to transmit in Nigeria a statement knowing or having reason to believe that it is a false statement”<sup>125</sup> (emphasis mine). The liability placed on users is further established in the provision that anyone who contravenes the above “shall be guilty of an offence and shall be liable on conviction.”<sup>126</sup> I argue that this signifies the labeling of social media users as publishers who are liable for the content they post. My argument is further reinforced by the fact that users are criminally liable with punishments of fines and/or imprisonment if they transmit false information. This same user liability is echoed throughout the bill, including for Part 3 Regulations where users are required in the first instance to either correct or take down misleading content.<sup>127</sup> It should be noted that the offenses for which users will be held culpable are only those classed as disinformation by the police—the repressive apparatus of state. The implication then is that content deemed to be offensive to or critical of the authorities can be targeted, reflecting the politics of regulation.

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<sup>123</sup>See Napoli, *supra* note 40 at 33.

<sup>124</sup>See Napoli, *supra* note 40 at 13.

<sup>125</sup>Internet Falsehood Bill, § 3(1).

<sup>126</sup>Internet Falsehood Bill, § 3(2).

<sup>127</sup>Internet Falsehood Bill, § 7 & 8.

In similar ways to the Internet Falsehood Bill, the other regulatory instruments that I analyze also view Internet and social media users as publishers liable for the content they post. For instance, the cyberstalking provisions of the Cybercrimes Act target “any *person* who knowingly or intentionally sends a message or other matter by means of computer systems or networks that he knows to be false”<sup>128</sup> (emphasis mine). In like manner, the Hate Speech Bill, when applied to social media, considers users as publishers. It states that “A *person* who uses, publishes ... any material, written and/or visual which is threatening, abusive or insulting ... commits an offence if such person intends thereby to stir up ethnic hatred”<sup>129</sup> (emphasis mine). Compliance notices can then be issued to those found culpable.<sup>130</sup> The Frivolous Petitions Bill also held users responsible for their posts, noting: “Any *person* [who] through text message, tweets, WhatsApp or through any social media post[s] any abusive statement knowing same to be false ... shall be guilty of an offence”<sup>131</sup> (emphasis mine).

One might argue that the mention of “person” in these legislations refers to a juridical person, but my review indicates that anyone is a target, whether they are individuals or bodies corporate. We see this in the Cybercrimes Act, which defines “person” as “an individual, body corporate, organisation or group of persons.”<sup>132</sup> Section 391 of the Penal Code, for which Mohammed, whom I mentioned in the introduction, was charged to court, also targets “Whoever by words either spoken or reproduced by mechanical means ... *publishes* any imputation” that harms a person’s reputation (emphasis mine). Overall, this shows that platforms are being absolved of the publisher label, while the weight of liability is placed on individual users based on policies that are premised on the concept of regulatory annexation.

## From Nigeria to Africa—Regulatory Annexation in the African Context

So far, I have considered regulatory annexation as the overarching framework for social media regulation in Nigeria. In this section, I show that regulatory thinking of this sort is not exclusive to Nigeria since it is prevalent across Africa. To show this, I conducted Internet searches on existing policies on social media in the 54 countries on the continent. The result shows that in total, 33 countries have at least one policy on Internet and social media, and these policies generally mirror the politics of regulation. What this implies is that the dominant approach to regulation in Nigeria, the type that mirrors broadcasting regulation seen in the Occupy Nigeria and #EndSARS case studies, also finds expression in much of Africa. Overall, my search shows that there are five broad categories of this approach, as outlined in Table 1 (shown earlier). These include laws or legal restrictions—in other words, legal instruments that are in force, having been assented to by the government. Bills are instruments that may or may not become laws. I separate them from laws to show that the use of law in this manner is likely to continue across the continent as more countries consider new measures of restrictions. Also, blanket social media bans have increasingly become a trend across Africa,

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<sup>128</sup>Cybercrimes Act, § 24.

<sup>129</sup>Hate Speech Bill, § 4(1).

<sup>130</sup>Hate Speech Bill, § 51(1).

<sup>131</sup>Frivolous Petitions Bill, § 4.

<sup>132</sup>Interpretations. Cybercrimes Act, § 58.

especially during politically significant periods such as elections or protests. I suggest that the use of this measure during politically sensitive periods strengthens my argument on the politics of regulation, where regulation is being used for regime security purposes rather than for the public interest. Social media taxes have also been introduced. Again, this points to the politics involved, since more often than not, the aim is to tax dissent.<sup>133</sup>

The use of the social media tax as a policy began in Uganda in June 2018, when the legislature there passed the Excise Duty (Amendment) Bill, including a 200-shilling (\$0.05) tax on social media usage per person per day. President Yoweri Museveni had said the tax was needed to curb the spread of gossip,<sup>134</sup> but this justification masks the politics behind it. For instance, Whitehead shows how the tax has adversely affected the level at which people engage on social media by making it more costly.<sup>135</sup>

Such a policy introduces economic factors to potentially discourage the rate at which people engage on political issues and criticize public leaders—a pointer to the political economy of it all. Still, Whitehead notes that 57% of their respondents had turned to virtual private networks (VPNs) as an alternative means of accessing social media, indicating that people usually find ways to circumvent regulations on the Internet.<sup>136</sup> Beyond taxes and levies, registrations make up another policy instrument that can be seen as a stand-in for taxes. This is because registrations are generally of two kinds—one that involves payment for “license” and another that requires no payment. The Tanzanian Electronic and Postal Communications Regulations, 2020, is one of the kind requiring payment. The law provides that “online content services” must be licensed by the Tanzania Communications Regulatory Authority every three years.<sup>137</sup> These “online content services” include bloggers, online broadcasting services, or any other online services, making its reach of applicability as broad as possible. Hence, the patrimonial linkages that accrue to traditional broadcast licenses, to which Mabweazara et al.<sup>138</sup> allude, can be potentially applied to online media forms.

In other countries, the licensing implication of “technical legal dependency”<sup>139</sup> that registrations portend for regulatees is extended to social media users. We see this in Uganda, where social media users with large followings were asked to register with the Uganda Communications Commission and pay a \$20 levy.<sup>140</sup> A similar situation exists in Egypt, where the 2018 Law on the Organisation of the Press, Media and the Supreme Council of Media requires social media accounts that have more than 5,000 subscribers/followers to be registered with the Egyptian Supreme Council. In Lesotho, a proposal specifies that the requirement for registration of social media users goes down to accounts with more than 100 followers. These supposedly large accounts are seen as

<sup>133</sup>See Levi Boxell & Zachary Steinart-Threlked, *Taxing Dissent: The Impact of a Social Media Tax on Uganda*, <https://arxiv.org/pdf/1909.04107.pdf>.

<sup>134</sup>*Uganda Imposes WhatsApp and Facebook Tax 'To Stop Gossip'*, BBC (May 31, 2018), <https://www.bbc.co.uk/news/world-africa-44315675>.

<sup>135</sup>Whitehead, *Uganda Social Media and Mobile Money Taxes Survey Report*, <http://ictau.org/wp-content/uploads/2018/07/ugtaxsurveyictauwhiteheadsmilovepdf-compressed-1.pdf>.

<sup>136</sup>See Barney Warf, *Geographies of Global Internet Censorship*, 76 *GEOJOURNAL*, 1–23 (2011).

<sup>137</sup>Electronic and Postal Communications (Online Content) Regulations, 2020, § 4.

<sup>138</sup>See Mabweazara et al., *supra* note 12.

<sup>139</sup>See Herman & Chomsky, *supra* note 108.

<sup>140</sup>*Uganda to Register, Monitor Social Media Influencers*, Reuters (Aug. 8, 2019), <https://www.reuters.com/article/us-uganda-communications-idUSKCN1UY265>.

“Internet broadcasters” and are to “comply with broadcasting principles and standards.”<sup>141</sup>

Regulations like these show that the classification of social media users as publishers is more explicit in some African countries than it is in Nigeria. Therefore, I make the point that the regulation of social media that is becoming common in Africa is aimed at viewing users as journalists or broadcasters and regulating them as such—a reference to the regulatory annexation concept. I argue that such an approach misses the underlying point, which is that not all social media users are journalists, never mind the label of “citizen journalists” usually thrust on users. Trying to “annex” social media usage—by applying broadcasting standards and regulations—then mirrors the classic case of putting square pegs in round holes. Except, of course, that the security-centered regulation represents the political economy of (social) media control where the aim is to police “unwanted” content deemed to be offensive or dangerous by the governing authority.

Perhaps the most obvious manifestation of the politics of regulation across Africa is the use of social media and Internet bans. They became a major feature during the Arab Spring uprising when Egypt banned access to all social media in a desperate bid to stop antigovernment protests.<sup>142</sup> Since then, bans have become increasingly common, and as I mentioned earlier, they are usually implemented around politically sensitive periods. These include before, during, and after elections such as in Gabon,<sup>143</sup> Equatorial Guinea,<sup>144</sup> and Congo.<sup>145</sup> Bans are also introduced during general protests, particularly those that call for political reforms. Examples can be seen in Togo,<sup>146</sup> Chad,<sup>147</sup> and Mali.<sup>148</sup> Here, we see that the political motivation behind regulation in general and social media bans in particular is clear. These bans are becoming an increasing feature; I suggest that this is so because of the ease and comprehensiveness they provide when it comes to silencing oppositional or activist narratives. All that is required is for Internet service providers, generally locally based, to be ordered to cut Internet or social media access to millions of users. Given the established power structure that places Internet service providers under direct government regulations, they cannot but comply. Hence, bans can be more appealing to semi-authoritarian governments for which the rigors of policing individual social media content online on the premise of disinformation can be daunting. The implementation of bans is then the ultimate tool to silence all users at once and at scale (except for those who circumvent blockades using tools like VPNs).

<sup>141</sup>*Proposed Internet Broadcasting Rules 2020*, Internet Society Lesotho Chapter (Oct. 28, 2020), <https://isoc.org.ls/news/elementor-11517>.

<sup>142</sup>See Eltantawy & Wiest, *supra* note 15.

<sup>143</sup>*Gabon is the Latest African Country to Shut Down its Internet as Election Protests Grow*, Quartz (Sep. 2, 2016), <https://qz.com/africa/771996/gabon-is-the-latest-african-country-to-shut-down-its-internet-as-election-protests-grow>.

<sup>144</sup>*Freedom in the World 2019: Equatorial Guinea*, Freedom House, <https://freedomhouse.org/country/equatorial-guinea/freedom-world/2019>.

<sup>145</sup>*Internet Shutdown in the Republic of the Congo on Election Day*, Netblocks (Mar. 21, 2021), <https://netblocks.org/reports/internet-shutdown-in-the-republic-of-the-congo-on-election-day-xAGR398z>.

<sup>146</sup>*Social Media Inaccessible in Togo as Opposition Calls for Change*, IFEX (Sep. 7, 2017), <https://ifex.org/social-media-inaccessible-in-togo-as-opposition-calls-for-change>.

<sup>147</sup>*Chad Lifted the 16-Months Social Media Shutdown but Concerns Remain*, CIPESA (Oct. 21, 2019), <https://cipesa.org/2019/10/chad-lifted-the-16-months-social-media-shutdown-but-concerns-remain>.

<sup>148</sup>*Social Media Restricted in Mali Amid Protests Against President*, DIGWATCH (Jul. 13, 2020), <https://dig.watch/updates/social-media-restricted-mali-amid-protests-against-president>.

There are also laws and bills that have been introduced on Internet and social media content in Africa that reflect the Nigerian example. Hence, just as Nigeria has the Cybercrimes Act, some African countries also have similar laws wherein the regulation of social media content is inscribed. Examples include cases in Malawi, Madagascar, Zambia, Mauritania, and Tanzania.<sup>149</sup> On the face of it, these laws or bills on cybercrimes have nothing to do with social media usage since they are generally concerned with protecting critical national infrastructure. Despite this focus, governments across Africa have introduced provisions, particularly on falsehood and harassment, in ways that make it possible for these laws to be extended to regular Internet and social media users, not just cybercriminals. Beyond cyber legislations, combinations of other laws or proposals have been introduced on Internet and social media use in Africa. One such is found in Morocco, which has a draft law on social media and broadcast networks that criminalizes calls for boycotts and the publication of false information.<sup>150</sup> This speaks to the power ordering that social media regulation creates, elevating the repressive state apparatus to a position where it not only determines but also enforces decisions about what is the right or wrong thing to say online. As is the pattern already established, these legislations are explained using vague and security-worded provisions. To point to a case, Niger Republic has passed a law that makes it possible for authorities to intercept information based on national security.<sup>151</sup> This means regulatory annexation is the operational basis, since the law makes it possible for the entire media architecture there to come under government surveillance. We also find regulatory annexation in Ethiopia, where the Hate Speech and Disinformation Prevention and Suppression Proclamation, 2020, criminalizes hate speech and disinformation via print, broadcasting, or social media.<sup>152</sup>

Despite their public interest justification, therefore, I make the case that the regulatory instruments on disinformation exist primarily for regime security ends. Take Egypt, for instance, where the Law on the Organisation of the Press is justified on the basis of national security. It legitimizes the power of the government to block websites and blogs without recourse to a court. However, it is seen as an attempt to silence dissenters because of fears in official circles “couched in concerns over the spread of false news and rumours that cause social chaos and undermine national unity.”<sup>153</sup> In Gabon, a news website was suspended for a month in August 2019 for publishing a story on the lack of beds in a

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<sup>149</sup>The following African countries have cybercrime provisions that include regulation that target or include social media use: Nigeria has the Cybercrimes Act. Malawi has the Electronic Transactions and Cyber Security Act of 2016, which makes provision for online communication to be restricted to promote human dignity, public order or national security. Madagascar has a cybercrime law of 2014, which criminalizes insults targeted at the state. Zambia has the Cyber Security and Cybercrimes Act of 2021, which targets issues such as hate speech. Mauritania has a 2015 Cybercrimes Law. Zimbabwe has the Cyber Security and Data Protection Bill of 2020, which criminalizes online falsehood. Tanzania has the 2015 Cybercrimes Act, where five sections are related to online falsehood, xenophobic material, discriminatory insults, incitement, and cyber harassment. Kenya has the Computer Misuse of Cybercrimes Act of 2018 (this has been ruled to be unconstitutional), with similar provisions on falsehood in all online forms and cyber harassment. Uganda also has the Computer Misuse Act, 2011, which has provisions on cyber harassment and cyberstalking.

<sup>150</sup>Morocco: *Government Must Fully Withdraw Draft Law on Social Media*, Article 19 (Jul. 10, 2020), <https://www.article19.org/resources/morocco-social-media>.

<sup>151</sup>*Niger Passes New Law on Interception of Communications*, CIPESA (Aug. 25, 2020), <https://cipesa.org/2020/08/niger-passes-new-law-on-interception-of-communications>.

<sup>152</sup>Article 7, Hate Speech and Disinformation Prevention and Suppression Proclamation, 2020.

<sup>153</sup>*Digital Authoritarianism in Egypt: Digital Expression Arrests 2011–2019*, Open Technology Fund (2019), page 21, <https://public.opentech.fund/documents/EgyptReportV06.pdf>.



Gabonese hospital.<sup>154</sup> This shows that regulation is aimed at silencing critical media reports, not necessarily protecting national security as if put forward. Beyond national security justifications, the tendency in Africa is also to securitize social and cultural values, as we see in Tanzania, where the Electronic and Postal Communications Regulations has been used to prosecute five people for allegedly insulting the president in a WhatsApp group chat.<sup>155</sup> Given all I have noted, therefore, it is clear that other African countries have embraced the regulatory annexation principle, highlighting the fact that they tend to learn regulatory tactics from one another. This is the basis for my argument that the regulation that we see in Nigeria reflects a broader pattern across much of Africa. Seen from this prism, the implications of social media regulation in Nigeria then have continent-wide ramifications.

## Conclusion

This article introduced the concept of regulatory annexation, which I defined as the extension of standards, principles, and sanctions originally meant for one frame of reference to another. I considered the concept in light of the politics of social media regulation in Nigeria and much of Africa. I began by highlighting the literature on political economy and media capture through censorship using cases such as Occupy Nigeria and #EndSARS, suggesting that the foundational theme here also applies to the regulation of social media usage—the underlying premise for regulatory annexation. This also means that social media users like Aminu Mohammed, who was dragged to court by Mrs. Aisha Buhari, are considered publishers liable for the content they post online. I further argued that regulatory annexation in Nigeria is ill-fitting, not least because all social media users cannot be equated as journalists. The regulatory annexation approach also exists in the wider African continent, leading me to suggest that the Nigerian case, far from being an isolated phenomenon, mirrors a widespread approach to social media regulation on the continent.

Put together, regulatory annexation as described here bears three implications, which I briefly touch on. First is the reality that regulatory annexation redefines how the control of the entire media architecture in Nigeria and Africa more broadly is conceived. In Nigeria, for instance, the print media are barely regulated, save for professional self-regulation and general media laws on offenses like defamation and libel. There are also exclusive online news platforms such as *Premium Times* and *Sahara Reporters* that have proliferated in recent times. These operate under a regulatory environment similar to that of the print media. With new media regulation, this is likely to change. This is because regulation targets anyone who publishes anything online, namely, “computer systems,”<sup>156</sup> bringing the full scope of Internet media under regulatory purview. The Cybercrimes Act in particular has been used to target online media outlets, including *Naija Live TV*, which published information on the collapse of a COVID-19 facility.<sup>157</sup> Likewise, the Internet Falsehood Bill brings all media outlets under its ambit. This is so

<sup>154</sup>*Gabon's Media Regulator Does It Again, Suspending a Leading News Site*, Reporters Without Borders (Aug. 6, 2019), <https://rsf.org/en/news/gabons-media-regulator-does-it-again-suspending-leading-news-site>.

<sup>155</sup>*Five Charged With Insulting Magufuli*, Web Archive (Sep. 15, 2016), <https://web.archive.org/web/20171117160013/http://www.thecitizen.co.tz/News/Five-charged-with-insulting-Magufuli/1840340-3381718-qbmx20z/index.html>.

<sup>156</sup>This is the broad description of targets in the Cybercrimes Act, 2015.

<sup>157</sup>*Nigerian Journalist Held Under Cybercrime Act for COVID-19 Coverage*, Committee to Protect Journalists (Jun. 10, 2020), <https://cpj.org/2020/06/nigerian-journalist-held-under-cybercrime-act-for-covid-19-coverage>.

because the bill *annexes* all websites delivering “mass media services” in Nigeria. Given the realities of the 21st century, these media services all have an online presence and use social media to direct traffic to their websites. This shows that social media regulation has a direct impact on the overall media system. By targeting websites, therefore, the print and online media that have hitherto operated under no formal regulation are affected.

A second implication is that beyond Africa, regulatory annexation also finds expression elsewhere. In the United Kingdom, for instance, the Online Safety Bill places social media companies under Ofcom’s regulatory purview, implying that platforms will be regulated in much the same way as broadcast stations. This is also evident in the case of the Online Safety Act in Australia. For the EU, the Digital Services Act gives the European Commission significant supervisory and enforcement powers to regulate platforms. It seems that even Nigeria, with its recently introduced Code of Practice for Interactive Computer Service/Internet Intermediaries,<sup>158</sup> is trying to regulate platforms directly. These all serve as examples of regulatory annexation because they show that the regulation that exists for one frame of reference (typically broadcasting) is being extended to social media. What this signifies is that regulatory annexation is not necessarily negative; it can also be seen in a positive light—what matters is the underlying notion of extension from one sphere to another. Regulatory annexation further implies that regulators are still grappling with how best to regulate social media, having not (yet) caught up with the realities of new media technologies and how to manage them. For now, they are perhaps settling for new cyber regulation<sup>159</sup>—that is, enacting entirely novel forms of regulation, but in ways that border on regulatory annexation.

Finally, regulatory annexation has implications for the regulation that will define the technology of the future. We only have to consider the introduction of newer technologies such as the metaverse, generative AI, and the Internet of Things. Will regulatory annexation be the operational paradigm for these technologies? By that I mean, will nation-states resort to the default of regulating these newer technologies using principles and rules that currently exist for the traditional or social media? These are pertinent questions, given the concern that some scholars are raising with the metaverse, particularly in terms of data privacy violations and the harms that come with user interactions.<sup>160</sup> The argument could follow, therefore, that regulatory annexation would be inadequate for the realities and challenges that these newer technologies represent. If social media regulation has proved problematic thus far, one can only imagine how much more difficult it will be to regulate the metaverse. The issues that I touch on in this article not only remain, they are further amplified in ways that we have not even come to terms with yet. Based on this, I reckon that although the tensions between state intervention and platform self-regulation will persist, the knowledge and power asymmetries will mean that platforms will continue with the self-regulatory model, further entrenching a regulatory system that places profit above safety.

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<sup>158</sup>*Code of Practice for Interactive Computer Service Platforms/Internet Intermediaries*, National Information Technology Development Agency (NITDA), 2022, <https://nitda.gov.ng/wp-content/uploads/2022/10/APPROVED-NITDA-CODE-OF-PRACTICE-FOR-INTERACTIVE-COMPUTER-SERVICE-PLATFORMS-INTERNET-INTERMEDIARIES-2022-002.pdf>.

<sup>159</sup>See Jovan Kurbalija, *An Introduction to Internet Governance*, 6th edition (2014).

<sup>160</sup>*The Metaverse: Three Legal Issues We Need to Address*, *The Conversation* (Feb. 1, 2022), <https://theconversation.com/the-metaverse-three-legal-issues-we-need-to-address-175891>.

This is why I believe that the most effective regulatory solution is a systemic or comprehensive approach of the sort proposed by Frank Fagan<sup>161</sup> and Poppy Wood,<sup>162</sup> which specifically addresses the business models that platforms have adopted in areas related to algorithmic recommender systems, user data exploitation, and content moderation. The aim here is for platforms to place online safety and the sanity of our collective social experience on a footing similar to, if not greater than, that of corporate profit. However, I recognize the practical challenges of enacting and enforcing systemic regulation, given that Internet platforms crisscross multiple media systems and legal jurisdictions. These platforms are also not likely to acquiesce to the regime that systemic regulation imposes. The balance of power, therefore, means that only a country like the United States and, to a lesser extent, European countries can design and implement systemic regulation. China is perhaps the only other actor strong enough to introduce systemic regulation, but the country has chosen to allow, even encourage, the current platform business model for authoritarian reasons.<sup>163</sup> For countries like Nigeria in the Global South, the goal should be to canvass for a global multistakeholder arrangement where countries collectively agree to create, domesticate, and apply a unified systemic regulatory code to any platform headquartered within their jurisdiction. This is what is needed to tame platform excesses and address the many challenges tied to the regulation of social media and other new communication technologies.

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<sup>161</sup>See Fagan, *supra* note 56.

<sup>162</sup>See Wood, *supra* note 56.

<sup>163</sup>See Couldry & Mejias, *supra* note 59.